

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

COSTCO WHOLESALE  
CORPORATION, a Washington  
corporation,

Plaintiff,

v.

ACUSHNET HOLDINGS CORP., a  
Delaware corporation,

Defendant.

No. 2:17-cv-423

COMPLAINT FOR DECLARATORY  
JUDGMENT OF NON-INFRINGEMENT  
AND INVALIDITY OF PATENT RIGHTS  
AND FOR NO FALSE ADVERTISING

DEMAND FOR JURY TRIAL

**I. NATURE OF THE CASE**

1. Costco Wholesale Corporation (“Costco”) seeks a declaratory judgment that it is not infringing any valid patent rights owned by defendant Acushnet Holdings Corp. (“Acushnet” or “defendant”) by its sale of its Kirkland Signature golf balls (“KS golf balls”) and that it has not engaged in false advertising regarding the KS golf balls. The need for such relief exists because Acushnet has wrongfully accused Costco of patent infringement and false advertising.

**II. THE PARTIES**

2. Costco Wholesale Corporation (“Costco”) is a Washington corporation with its principal place of business at 999 Lake Drive, Issaquah, Washington 98027.

COMPLAINT FOR DECLARATORY JUDGMENT OF  
NON-INFRINGEMENT AND INVALIDITY OF  
PATENT RIGHTS – 1 (Case No. 2:17-cv-423)

**Perkins Coie LLP**  
1201 Third Avenue, Suite 4900  
Seattle, WA 98101-3099  
Phone: 206.359.8000  
Fax: 206.359.9000

1           3. Defendant Acushnet Holdings Corp. (“Acushnet”) is, on information and belief, a  
2 Delaware corporation with its principal place of business at 215 Duchaine Blvd., New Bedford,  
3 Massachusetts 02745.

### 4                                   **III. JURISDICTION AND VENUE**

5           4. The Court has original jurisdiction over the claims because they arise under 28  
6 U.S.C. §§ 2201 (declaratory judgment), 1331 (federal question) and 1338 (patent and Lanham  
7 Act).

8           5. Venue is proper under 28 U.S.C. § 1391(b)(1) because Acushnet does business in  
9 and is subject to personal jurisdiction in the this district for the claims asserted herein in and  
10 § 1391(b)(2) because a substantial part of the events or omissions giving rise to the claim  
11 occurred in this district.

### 12                                   **IV. BACKGROUND FACTS**

13           6. Costco is a membership-based retailer that is committed to bringing quality  
14 products to its members at low prices. In addition to selling name brand merchandise, Costco  
15 owns registered trademark rights to KIRKLAND SIGNATURE (“KS”), and sells a variety of  
16 items under that brand. In 2016, Costco introduced its KS golf ball, a golf ball that Costco sold  
17 at approximately \$15 per dozen. The KS golf ball sold out quickly, and was praised by golfers  
18 and experts as a golf ball of tremendous quality and value. Many reviewers compared the KS  
19 golf ball to higher-priced “tour quality” golf balls sold by national brands, such as Titleist,  
20 Callaway, and TaylorMade. Even though the Costco KS golf ball has sold out, Costco plans to  
21 continue to sell the KS golf ball.

22           7. In response to the popularity of the KS golf ball, Acushnet sent Costco a  
23 threatening letter, wrongfully accusing Costco of infringing 11 Acushnet patents based on its sale  
24 of the KS golf ball and engaging in false advertising based on its Kirkland Signature guarantee  
25 that all Kirkland Signature products “meet or exceed the quality standards of leading national  
26 brands.”

8. A justiciable controversy exists as to whether Costco is infringing any valid patent rights owned by Acushnet as a result of Costco's sale of the KS golf ball or has engaged in any false advertising in connection with such golf ball.

9. Costco's sales of the KS golf ball do not infringe any valid patent rights owned by Acushnet, including any valid patent claims identified by Acushnet in its correspondence. Accordingly, Costco respectfully requests that the Court issue a declaratory judgment confirming that Costco is not infringing any Acushnet patent rights as a result of its sale of the KS golf ball, including any valid patent claims identified by Acushnet. The specific patents identified by Acushnet are listed below.

#### **V. REQUEST FOR DECLARATORY JUDGMENT CONCERNING U.S. PATENT NO. 6,994,638**

10. Costco re-alleges paragraphs 1 through 9 above as if fully set forth herein.

11. Costco is not infringing any valid claims of U.S. Patent No. 6,994,638 ("the '638 patent"). Acushnet has accused Costco of infringing claim 1 of the '638 patent. Costco's sales of the KS golf ball do not constitute infringement of claim 1 of the '638 patent, however, because, among other things, the Shore D hardness of the center core of the KS ball is not "at least about 10 points" less than the Shore D hardness of the outer core.

12. The '638 patent is invalid under 35 U.S.C. §§ 102, 103 and/or 112. The claims are invalid under 35 U.S.C. §§ 102 and/or 103, for example, in light of U.S. Patent No. 6,468,169 and other prior art publications and activities.

13. Costco is entitled to a declaratory judgment that it has not infringed any claims of the '638 patent and that the patent is invalid.

#### **VI. REQUEST FOR DECLARATORY JUDGMENT CONCERNING U.S. PATENT NO. 8,123,632**

14. Costco re-alleges paragraphs 1 through 13 above as if fully set forth herein.

15. Costco is not infringing any valid claims of U.S. Patent No. 8,123,632 ("the '632 patent"). Acushnet has accused Costco of infringing claim 17 of the '632 patent. Costco's sales

1 of the KS ball do not constitute infringement of claim 17, however, because, at the least, the  
 2 surface hardness of the outer core of the KS ball is not 75 Shore C or greater.

3 16. The '632 patent is invalid under 35 U.S.C. §§ 102, 103 and/or 112. The claims  
 4 are invalid under 35 U.S.C. §§ 102 and/or 103, for example, in light of U.S. Publication No.  
 5 2007/0281802 and other prior art publications and activities.

6 17. Costco is entitled to a declaratory judgment that it has not infringed any claims of  
 7 the '632 patent and that the patent is invalid.

8 **VII. REQUEST FOR DECLARATORY JUDGMENT CONCERNING**  
 9 **U.S. PATENT NO. 8,444,507**

10 18. Costco re-alleges paragraphs 1 through 17 above as if fully set forth herein.

11 19. Costco is not infringing any valid claims of U.S. Patent No. 8,444,507 ("the '507  
 12 patent"). Acushnet has accused Costco of infringing claim 17 of the '507 patent. Costco sales of  
 13 the KS golf ball do not constitute infringement of claim 17 of the '507 patent because, at the  
 14 least, the KS ball does not have an outer core with a surface hardness of about 75 Shore C or  
 15 greater.

16 20. The '507 patent is invalid under 35 U.S.C. §§ 102, 103 and/or 112. The claims  
 17 are invalid under 35 U.S.C. §§ 102 and/or 103, for example, in light of U.S. Publication No.  
 18 2007/0281802 and other prior art publications and activities.

19 21. Costco is entitled to a declaratory judgment that it has not infringed any claims of  
 20 the '507 patent and that the patent is invalid.

21 **VIII. REQUEST FOR DECLARATORY JUDGMENT CONCERNING**  
 22 **U.S. PATENT NO. 9,320,944**

23 22. Costco re-alleges paragraphs 1 through 21 above as if fully set forth herein.

24 23. Costco is not infringing any valid claims of U.S. Patent No. 9,320,944 ("the '944  
 25 patent"). Acushnet has accused Costco of infringing claim 1 of the '944 patent. Costco's sales  
 26 of the KS golf ball do not constitute infringement of claim 1 of the '944 patent, however,

1 because, at the least, the KS ball does not have an outer core with a surface hardness of “at  
2 least about 85 Shore C.”

3 24. The '944 patent is invalid under 35 U.S.C. §§ 102, 103 and/or 112. The claims  
4 are invalid under 35 U.S.C. §§ 102 and/or 103, for example, in light of WO98/43709 Publication,  
5 U.S. Publication No. 2002/0144466, and other prior art publications and activities.

6 25. Costco is entitled to a declaratory judgment that it has not infringed any claims of  
7 the '944 patent and that the patent is invalid.

8 **IX. REQUEST FOR DECLARATORY JUDGMENT CONCERNING**  
9 **U.S. PATENT NO. 8,025,593**

10 26. Costco re-alleges paragraphs 1 through 25 above as if fully set forth herein.

11 27. Costco is not infringing any valid claims of U.S. Patent No. 8,025,593 (“the '593  
12 patent”). Acushnet has accused Costco of infringing claim 1 of the '593 patent. Costco's sales  
13 of the KS golf ball do not constitute infringement of claim 1 of the '593 patent, however,  
14 because at the least, the surface hardness of the inner core of the KS golf ball is not less than  
15 either of the outer surface hardness or inner surface hardness of the outer core by 5 Shore C or  
16 greater.

17 28. The '593 patent is invalid under 35 U.S.C. §§ 102, 103 and/or 112. The claims  
18 are invalid under 35 U.S.C. §§ 102 and/or 103, for example, in light of U.S. Patent No.  
19 6,468,169 and other prior art publications and activities.

20 29. Costco is entitled to a declaratory judgment that it has not infringed any claims of  
21 the '593 patent and that the patent is invalid.

22 **X. REQUEST FOR DECLARATORY JUDGMENT CONCERNING**  
23 **U.S. PATENT NO. 8,257,201**

24 30. Costco re-alleges paragraphs 1 through 29 above as if fully set forth herein.

25 31. Costco is not infringing any valid claims of U.S. Patent No. 8,257,201 (“the '201  
26 patent”). Acushnet has accused Costco of infringing claim 1 of the '201 patent. Costco's sales  
of the KS golf ball do not constitute infringement of claim 1 of the '201 patent, however,

1 because, at the least, the surface hardness of the inner core is not less than either of the outer  
2 surface hardness or inner surface hardness of the outer core by 3 Shore D or greater.

3 32. The '201 patent is invalid under 35 U.S.C. §§ 102, 103 and/or 112. The claims  
4 are invalid under 35 U.S.C. §§ 102 and/or 103, for example, in light of U.S. Patent No.  
5 6,468,169 and other prior art publications and activities.

6 33. Costco is entitled to a declaratory judgment that it has not infringed any claims of  
7 the '201 patent and that the patent is invalid.

8 **XI. REQUEST FOR DECLARATORY JUDGMENT CONCERNING**  
9 **U.S. PATENT NO. 7,331,878**

10 34. Costco re-alleges paragraphs 1 through 33 above as if fully set forth herein.

11 35. Costco is not infringing any valid claims of U.S. Patent No. 7,331,878 ("the '878  
12 patent"). Acushnet has accused Costco of infringing the '878 patent but has not identified any  
13 specific claims. Costco's sales of the KS golf ball do not constitute infringement of any of the  
14 claims of the '878 patent, however, because, at the least, the Coefficient of Restitution (COR) for  
15 the first three layers of the KS ball is not .003 less than the COR for the finished ball.

16 36. The '878 patent is invalid under 35 U.S.C. §§ 102, 103 and/or 112. The claims  
17 are invalid under 35 U.S.C. §§ 102 and/or 103, for example, in light of WO00/57963 and other  
18 prior art publications and activities.

19 37. Costco is entitled to a declaratory judgment that it has not infringed any claims of  
20 the '878 patent and that the patent is invalid.

21 **XII. REQUEST FOR DECLARATORY JUDGMENT CONCERNING**  
22 **U.S. PATENT NO. 6,358,161**

23 38. Costco re-alleges paragraphs 1 through 37 above as if fully set forth herein.

24 39. Costco is not infringing any valid claims of U.S. Patent No. 6,358,161 ("the '161  
25 patent"). Acushnet has accused Costco of infringing claim 7 of the '161 patent. Costco's sales  
26 of the KS golf ball do not constitute infringement of claim 7 of the '161 patent, however,

1 because, at the least, dimples on the KS golf ball do not cover more than 80% of the outer  
2 surface.

3 40. The '161 patent is invalid under 35 U.S.C. §§ 102, 103 and/or 112. The claims  
4 are invalid under 35 U.S.C. §§ 102 and/or 103, for example, in light of U.S. Patent No.  
5 5,292,132 and other prior art publications and activities.

6 41. Costco is entitled to a declaratory judgment that it has not infringed any claims of  
7 the '161 patent and that the patent is invalid.

8 **XIII. REQUEST FOR DECLARATORY JUDGMENT CONCERNING**  
9 **U.S. PATENT NO. 7,887,439**

10 42. Costco re-alleges paragraphs 1 through 41 above as if fully set forth herein.

11 43. Costco is not infringing any valid claims of U.S. Patent No. 7,887,439 ("the '439  
12 patent"). Acushnet has accused Costco of infringing claim 1 of the '439 patent. Costco's sales  
13 of the KS golf ball do not constitute infringement of claim 1 of the '439 patent, however,  
14 because, at the least, no "portion of the plurality of recessed dimples [on the KS ball] have a  
15 profile defined by the revolution of a catenary curve...."

16 44. The '439 patent is invalid under 35 U.S.C. §§ 102, 103 and/or 112. The claims  
17 are invalid under 35 U.S.C. §§ 102 and/or 103, for example, in light of U.S. Patent No.  
18 6,796,912, U.S. Patent No. 5,253,872 and other prior art publications and activities.

19 45. Costco is entitled to a declaratory judgment that it has not infringed any claims of  
20 the '439 patent and that the patent is invalid.

21 **XIV. REQUEST FOR DECLARATORY JUDGMENT CONCERNING**  
22 **U.S. PATENT NO. 7,641,572**

23 46. Costco re-alleges paragraphs 1 through 45 above as if fully set forth herein.

24 47. Costco is not infringing any valid claims of U.S. Patent No. 7,641,572 ("the '572  
25 patent"). Acushnet has accused Costco of infringing claim 1 of the '572 patent. Costco's sales  
26 of the KS ball do not constitute infringement of the '572 patent, however, because, at the least,

1 no “portion of the plurality of recessed dimples [on the KS ball] have a profile defined by the  
2 revolution of a catenary curve....”

3 48. The ’572 patent is invalid under 35 U.S.C. §§ 102, 103 and/or 112. The claims  
4 are invalid under 35 U.S.C. §§ 102 and/or 103, for example, in light of U.S. Patent No.  
5 6,796,912, U.S. Patent No. 5,575,477, U.S. Patent No. 5,562,552 and other prior art publications  
6 and activities.

7 49. Costco is entitled to a declaratory judgment that it has not infringed any claims of  
8 the ’572 patent and that the patent is invalid.

9 **XV. REQUEST FOR DECLARATORY JUDGMENT CONCERNING**  
10 **U.S. PATENT NO. 7,163,472**

11 50. Costco re-alleges paragraphs 1 through 49 above as if fully set forth herein.

12 51. Costco is not infringing any valid claims of U.S. Patent No. 7,163,472 (“the ’472  
13 patent”). Acushnet has accused Costco of infringing claim 5 of the ’472 patent. Costco’s sales  
14 of the KS ball do not constitute infringement of the ’472 patent, however, because, at the least,  
15 the dimples on the KS ball are not “defined by the revolution of a Catenary Curve.”

16 52. The ’472 patent is invalid under 35 U.S.C. §§ 102, 103 and/or 112. The claims  
17 are invalid under 35 U.S.C. §§ 102 and/or 103, for example, in light of prior art golf balls,  
18 including at least five prior art Titleist balls sold by Acushnet, and other prior art publications  
19 and activities.

20 53. Costco is entitled to a declaratory judgment that it has not infringed any claims of  
21 the ’472 patent and that the patent is invalid.

22 **XVI. REQUEST FOR DECLARATORY JUDGMENT CONCERNING**  
23 **CLAIM OF FALSE ADVERTISING**

24 54. Costco re-alleges paragraphs 1 through 53 above as if fully set forth herein.

25 55. Acushnet has accused Costco of false advertising based on its Kirkland Signature  
26 guarantee, which is not specific to the KS golf ball, and which states that Kirkland Signature  
products “meet or exceed the quality standards of leading national brands.”



1           56.     Acushnet asserts that the statement is intended to indicate to a reasonable  
2 consumer that the KS golf ball is the same or of greater quality as Acushnet's Pro V1 golf ball.

3           57.     Costco has never publicly compared the KS ball with any Acushnet ball,  
4 including Acushnet's Pro V1 golf balls.

5           58.     A reasonable consumer would not interpret the Kirkland Signature guarantee as  
6 intended to convey a statement of fact about any specific comparisons of quality between the KS  
7 ball and any specific manufacturer or ball, including Acushnet and its Pro V1 ball.

8           59.     In addition, to the extent a consumer would interpret the Kirkland Signature  
9 guarantee in that manner, the statement is true. Many individual golfers and golf ball testers and  
10 experts have used and/or tested the KS ball and concluded that it is at least comparable to balls  
11 sold by other leading national brands, including Acushnet.

12           60.     Costco is entitled to a declaratory judgment that it has not engaged in any false  
13 advertising in connection with the KS golf ball.

14                               **XVII. REQUEST FOR RELIEF**

15           Costco seeks the following relief:

16           1.     A declaratory judgment that it is not infringing any Acushnet patent rights,  
17 including any valid claims of the patents identified above;

18           2.     A declaratory judgment that the allegedly infringed claims of the Acushnet  
19 patents identified above are invalid in light of 35 U.S.C. §§ 102, 103 and/or 112;

20           3.     A permanent injunction enjoining Acushnet from asserting, to Costco or its  
21 customers, that Costco's sales of the KS golf ball constitute infringement of Acushnet's patent  
22 rights, including the patents identified above;

23           4.     A declaratory judgment that Costco has not engaged in any false advertising in  
24 connection with its promotion of the KS golf ball;

25           5.     For an award to Costco of its reasonable attorneys' fees and costs pursuant to 35  
26 U.S.C. § 285 or as otherwise permitted by law; and

6. For such other and further relief that the Court deems just and proper.

DATED: March 17, 2017.

By: s/ Ramsey M. Al-Salam  
Ramsey M. Al-Salam #18822  
Nicholas H. Hesterberg, #41970  
**Perkins Coie LLP**  
1201 Third Avenue, Suite 4900  
Seattle, WA 98101-3099  
Telephone: 206.359.8000  
Facsimile: 206.359.9000  
Email: RAlsalam@perkinscoie.com  
Email: NHesterberg@perkinscoie.com

COMPLAINT FOR DECLARATORY JUDGMENT OF  
NON-INFRINGEMENT AND INVALIDITY OF  
PATENT RIGHTS – 10 (Case No. 2:17-cv-423)

29040-0401/134663653.2

**Perkins Coie LLP**  
1201 Third Avenue, Suite 4900  
Seattle, WA 98101-3099  
Phone: 206.359.8000  
Fax: 206.359.9000